

De Dietrich Kitchen Appliances Limited

TERMS AND CONDITIONS OF SALE

1. DEFINITIONS:

In these conditions the 'Company' means De Dietrich Kitchen Appliances Limited. 'Customer' means any purchaser of Goods or Services from the Company. 'Retailer' means any dealer whether or not a Customer who supplies Goods to any User. 'Display Goods' means any Goods of the Company supplied for retail display purposes. 'User' means any person supplied with Goods by a Retailer for personal use. 'Goods' means all new and unused appliances and other goods agreed in the Contract to be supplied by the Company (including any part or parts of them and 'Goods' shall, as the context requires, include 'Display Goods'). 'Services' means the services agreed in the Contract to be provided by the Company and 'Contract' means any contract between the Company and the Customer for the sale and purchase of Goods or Services, formed in accordance with and incorporating these conditions.

2. APPLICATION:

2.1 These conditions shall apply to and be incorporated into the Contract and shall prevail over and apply to the exclusion of any other terms or conditions referred to in the Customer's purchase order, confirmation of order, acceptance of quotation, or specification or other document supplied by the Customer, or implied by trade custom, practice or course of dealing.

2.2 These conditions apply to all of the Company's sales and supply and any variation to these conditions and any representations about the Goods or Services shall have no effect unless specifically agreed to in writing and signed by an authorised officer or employee of the Company. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. Nothing in this condition shall exclude or limit the Company's liability for fraudulent misrepresentation.

3. ORDERS:

3.1 Each order or acceptance of a quotation for Goods or Services by the Customer from the Company shall be deemed to be an offer by the Customer to buy Goods or Services subject to these conditions.

3.2 No order placed by the Customer shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company or (if earlier) the Company delivers the Goods to the Customer, starts to provide the Services or otherwise commences fulfilment of the Contract.

3.3 The Customer shall ensure that the terms of its order and any applicable specification are complete and accurate.

3.4 Any quotation is given by the Company on the basis that no Contract shall come into existence until the Company despatches an acknowledgement of order to the Customer or otherwise accepts the Order in accordance with these conditions. Any quotation given by authorised officers or employees of the Company is valid for a period of 21 days only from its date, provided that the Company has not previously withdrawn it.

3.5 All orders are accepted subject to the credit status of the Customer being to the Company's satisfaction and without prejudice to the generality of the foregoing the Company may (in its absolute discretion) having informed the Customer that the Goods are ready for despatch refrain from delivering the Goods until such time as the Customer tenders the purchase money to the Company together with any outstanding amounts which may be due to the Company on any account whatsoever.

4. PRICES:

4.1 Unless otherwise agreed by the Company in writing, the price of the Goods or Services shall be the price set out in the Company's price list published on the date of receipt of order.

4.2 The Company shall have the right at any time to revise the price to take into account increases in costs (including (without limitation) costs of any goods, materials, carriage, labour or overheads, the increase or imposition of any tax, duty or other levy, and any variations in exchange rates.

5. TERMS OF PAYMENT:

5.1 Subject to condition 5.4, payment of the price for the Goods or the Services is due in pounds sterling on the date on which the Goods or Services are delivered or deemed to be delivered or (if later) the date for payment specified in the Contract.

5.2 Time for payment shall be of the essence.

5.3 No payment shall be deemed to have been received until the Company has received cleared funds.

5.4 All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.

5.5 The Customer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Customer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Customer.

5.6 If the Customer fails to pay any sums due pursuant to the Contract, the Customer shall be liable to pay interest on the outstanding amount from the due date for payment as set out under the Late Payment of Commercial Debts (Interest) Act 1998 or 2% above Lloyds TSB base lending rate, which ever is higher.

5.7 Any discounts allowed by the Company will be available to the Customer only if payment of the full discounted price is made in accordance with condition 5.1.

5.8 If any payment is not made in accordance with condition 5.1 any credit authorised by the Company in respect of goods supplied for display purposes or on any other basis) may be withdrawn immediately by the Company and in such cases all payments due by the Customer to the Company shall become due immediately.

5.9 If payment of the contract price or if any other sum payable by the Customer to the Company is not made on the due date, the Company may suspend the manufacture, delivery or supply of any further Goods or Services until payment has been made in full.

5.10 Without prejudice to its other rights the Company shall be entitled to recover from the Customer all costs and expenses (including legal and out-of-pocket expenses and any value added tax on those costs and expenses) incurred by the Company in enforcing payment of the price for the Goods or the Services.

6. DELIVERY AND RISK:

6.1 Any dates specified by the Company for delivery of the Goods or Services are intended to be an estimate and time for delivery shall not be made of the essence by notice.

6.2 Subject to the other provisions of these conditions the Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods or Services (even if caused by the Company's negligence), nor shall any delay entitle the Customer to terminate or rescind the Contract unless such delay exceeds 180 days.

6.3 Where the Company agrees in writing for delivery of the Goods or Services to take place other than at the Company's place of business:

(i) the Company will deliver as near as possible to the Customer's site as a safe hard road permits. Damage due to inadequate site access shall be at the Customer's risk;

6.4 Risk in the Goods shall pass to the Customer upon delivery.

6.5 If delivery of the Goods or Services are delayed at the request of the Customer (with the consent of the Company) the Goods will be stored at the Customer's risk and expense (including, without limitation, storage and insurance).

6.6 If for any reason the Customer fails to take delivery of Goods or Services when they are ready for delivery or the Company is unable to deliver the Goods or Services on time because the Customer has not provided appropriate instructions, documents, licences or authorisations:

(i) risk in the Goods shall pass to the Customer (including for loss or damage caused by the Company's negligence);

(ii) the Goods or Services shall be deemed to have been delivered; and
(iii) the Company may store the Goods until delivery, whereupon the Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

6.7 The Company reserves the right to deliver the Goods by instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.

6.8 Each instalment shall be treated as a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Customer to repudiate or cancel any other Contract or instalment.

7. DESCRIPTION:

7.1 All technical data, drawings, reports, designs, samples, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods or Services described in them. They shall not form part of the Contract and this is not a sale by sample.

7.2 The quantity and description of the Goods and Services shall be as set out in the Company's quotation or acknowledgement of order.

8. TITLE:

8.1 The Goods are at the risk of the Customer from the time of delivery.

8.2 Ownership of the Goods and the Services shall not pass to the Customer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:

(i) the Goods; and
(ii) the Services; and
(iii) all other sums which are or which become due to the Company from the Customer on any account.

8.3 Until such time as the property in the Goods passes to the Customer, the Customer shall:

(i) hold the Goods as the Company's fiduciary agent and bailee;
(ii) store the Goods (at no cost to the Company) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as the Company's property;
(iii) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
(iv) maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Customer shall produce the policy of insurance to the Company.

8.4 The Customer may resell the Goods before ownership has passed to it solely on the following conditions:

(i) any sale shall be effected in the ordinary course of the Customer's business at full market value; and
(ii) any such sale shall be a sale of the Company's property on the Customer's own behalf and the Customer shall deal as principal when making such a sale.

8.5 The Customer's right to possession of the Goods shall terminate immediately if:

(i) the Customer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Customer or notice of intention to appoint an administrator is given by the Customer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 of the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relation to the insolvency or possible insolvency of the Customer; or
(ii) the Customer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any statutory obligations under the Contract or any other contract between the Company and the Customer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Customer ceases to trade; or
(iii) the Customer encumbers or in any way charges any of the Goods; (together the "Insolvency Events").

8.6 The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Company, but if the Customer does so all moneys owing by the Customer to the Company shall (without prejudice to any other right or remedy of the Company) forthwith become due and payable.

8.7 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.

8.8 The Customer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Customer's right to possession has terminated, to recover them.

8.9 Where the Company is unable to determine whether any Goods are the goods in respect of which the Customer's right to possession has terminated, the Customer shall be deemed to have sold all goods of the kind sold by the Company to the Customer in the order in which they were invoiced to the Customer.

8.10 On termination of the Contract, however caused, the Company's (but not the Customer's) rights contained in this condition 8 shall remain in effect.

9. DISPLAY GOODS:

9.1 All Display Goods provided to any Customer, Retailer or User are subject to these conditions which shall prevail over and apply to the exclusion of any other terms or conditions. Display Goods may be provided by the Company on a chargeable or non-chargeable basis, as stated in the Contract.

9.2 Ownership of Display Goods shall remain at all times with the Company.

9.3 For chargeable Display Goods, if agreed in the Contract, property in such Display Goods may pass to the Customer, Retailer or User (as the case may be), but subject to all time to the entire provisions of condition 8 (as amended as necessary in the Contract).

9.4 Any trade discount provided by the Company for Display Goods is subject to a minimum compulsory display period of 8 months.

9.5 The Customer grants the Company, its agents and employees an irrevocable licence at any time during the 6th and 7th month of the 8 month compulsory display period to enter any premises where the Display Goods are displayed to confirm compliance with condition 9.4.

9.6 Where the Customer, Retailer or User fails to comply with condition 9.4 the Company shall be entitled to debit the difference between the Company's normal trading terms and any trade discount provided.

10. CANCELLATION:

The Contract may be cancelled only with written consent of an authorised officer or employee of the Company (such consent to be at the Company's absolute discretion) and subject to the Customer indemnifying the Company in full and on demand from and against all and any losses, costs and expenses suffered or incurred by the Company arising out of, or in connection with, the cancellation of the Contract.

11. LIABILITY:

11.1 Subject to condition 6, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:

(i) any breach of these conditions;
(ii) any use made or resale by the Customer of any of the Goods, or of any product incorporating any of the Goods; and

(iii) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

11.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.

11.3 Nothing in these conditions excludes or limits the liability of the Company:

(i) for death or personal injury caused by the Company's negligence; or
(ii) under section 2(3), Consumer Protection Act 1987; or
(iii) for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
(iv) for fraud or fraudulent misrepresentation.

11.4 Subject to condition 10.2 and condition 10.3:

(i) the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price;

(ii) the Company shall not be liable to the Customer for loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract;

(iii) the Company shall not be liable to the Customer for shortage in quantity of Goods delivered or where the Goods are carried by the Company's own transport or by a carrier on behalf of the Company damage to or loss of the Goods or any part thereof in transit unless such shortage, damage, or loss is:

(a) noted on the Company's copy of the delivery note and full details of such shortage, damage, or loss are provided to the Company in writing within 3 working days of delivery or deemed delivery; or

(b) if the delivery note is marked "unexamined" full details of such shortage, damage, or loss are provided to the Company in writing within 7 working days of delivery or deemed delivery.

(iv) The Company shall not be liable to the Customer for defects in the Goods caused by an act, neglect or default of the Customer or any third party.

(v) The Company shall not be liable to the Customer for other defect in the Goods unless full details of such defects in the Goods are provided to the Company in writing within 3 working days of delivery or deemed delivery.

12. USER WARRANTY:

12.1 The Company warrants for a period of one year from the date of purchase from the Retailer that the Goods shall:

(i) be of satisfactory quality within the meaning of the Sale of Goods Act 1979;
(ii) be reasonably fit for purpose; and
(iii) contain no faulty manufacture or defective parts or materials (provided the Retailer from whom the Goods were purchased has been notified by the Customer in writing of the fault or defect promptly after discovery thereof and the Retailer has notified the Company in writing of the default within one month of notification from the customer).

12.2 The Company's only liability under the warranties in this condition 12 is to repair or have repaired the Goods free of charge (at its own premises, those of User, or those of a Retailer, as the Company may elect). This warranty does not extend to electric light bulbs, neon indicators or electric motor brushes, nor does it apply if the fault or defect is as a result of:

(i) the use of the Goods for purposes other than those for which they were designed;
(ii) failure to follow instructions in the instruction manual;
(iii) faulty installation or repair (other than repair carried out under this warranty);
(iv) tampering with or lack of due care in using the Goods; or
(v) use of spare parts or accessories not approved by the Company for use with the Goods or alteration of the Goods in any respect.

12.3 This warranty is personal to the User or the Customer and is available only against presentation of the Retailer's dated sales invoice.

12.4 This warranty is in addition to and does not affect the rights of the User expressed or implied by statute, common law or otherwise.

12.5 If the Company complies with condition 12.2 it shall have no further liability for a breach of the warranty in condition 12.1 in respect of such Goods.

12.6 Any Goods replaced shall belong to the Company and any repaired or replacement Goods shall be guaranteed on these terms for the unexpired portion of the one year period.

13. FORCE MAJEURE:

The Company shall not be liable to the Customer for any loss or damage which may be suffered by the Customer as a direct or indirect result of the Contract being prevented, hindered, delayed or rendered uneconomic by reason of circumstances beyond the Company's reasonable control including but not limited to war, riot, strike, trade dispute, accident, breakdown of plant or machinery, or difficulty in obtaining workmen, materials, stocks or transport, or circumstances affecting the manufacture or delivery of the Goods or Services in the Company's normal manner, or the supply of the Goods or Services from the Company's normal sources.

14. INSOLVENCY AND DEFAULT:

If the Customer is the subject of an Insolvency Event, the Company may without prejudice to any of its other rights stop any Goods in transit and/or suspend further deliveries and/or exercise its rights under Condition 8 and/or by notice in writing to the Customer terminate the Contract with immediate effect.

15. GENERAL:

15.1 Failure or delay by the Company to exercise or enforce any rights conferred by the Contract shall not be deemed to be a waiver of any such rights or operate so as to bar the exercise or enforcements thereof at any time or times thereafter.

15.2 No variation of these conditions shall be effective unless made in writing signed by an authorised officer or employee of the Company.

15.3 Upon written request the Company will verify whether any named individual is an authorised officer or employee of the Company.

15.4 The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and the parties hereby submit to the exclusive jurisdiction of English Courts.

15.5 Words in the singular shall include the plural and vice versa.

15.6 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.

15.7 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provisions shall continue in full force and effect.

15.8 Any waiver by the Company of any breach of, or of any default under, any provision of the Contract by the Customer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

15.9 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

16. DATA PROTECTION ACT:

16.1 Where the Customer is either a sole trader or a partnership, data on business or personal addresses, trading and payment history shall be held by the Company for the purpose of entering into a Contract, establishing and reviewing credit limits and credit checking. Data may also be used by the company for responding to trade reference requests and supplying credit information when required.

16.2 The Customer warrants that:

(i) all data disclosed to the Company has been provided with the Customer's consent; and
(ii) the Company may disclose the Customer's data to third parties.